

VZCZCXRO6468  
RR RUEH DU RUEHMR RUEHRN  
DE RUEHSA #1047/01 1371454  
ZNY CCCCC ZZH  
R 161454Z MAY 08  
FM AMEMBASSY PRETORIA  
TO RUEHC/SECSTATE WASHDC 4483  
INFO RUCNSAD/SOUTHERN AF DEVELOPMENT COMMUNITY COLLECTIVE  
RUEHPL/AMEMBASSY PORT LOUIS 1381  
RUEHTN/AMCONSUL CAPE TOWN 5608  
RUEH DU/AMCONSUL DURBAN 9824  
RHEHNSC/NSC WASHDC  
RUEAIIA/CIA WASHINGTON DC  
RHEFDIA/DIA WASHINGTON DC

C O N F I D E N T I A L SECTION 01 OF 02 PRETORIA 001047

SIPDIS

E.O. 12958: DECL: 05/15/2018

TAGS: [PGOV](#) [SF](#)

SUBJECT: ZUMA'S TRIAL DATE DELAYED (MAYBE INDEFINITELY)

PRETORIA 00001047 001.2 OF 002

Classified By: Political Counselor Raymond L. Brown. Reasons 1.4(b) and (d).

11. (C) SUMMARY. On 15 April, lawyers for both ANC President Jacob Zuma and French arms dealer Thint informed the South African National Prosecuting Authority (NPA) and KwaZulu-Natal Judge President Vuka Tshabalala that they will not be ready to start defending themselves on 4 August, a date originally proposed by the NPA. Talk within ANC and legal circles is that a political, rather than a legal solution, will be found to prevent ANC President Jacob Zuma from being convicted for corruption, tax evasion, and racketeering. Already we are starting to see some signs of bias, with KwaZulu-Natal Judge President Tshabalala publicly chastising the NPA for not personally informing him of the timing of the case, even though the dates for South Africa's most high-profile court case have been public for months and leaked documents show that Tshabalala has been copied on NPA correspondence to that effect. In practical terms, the trial's delay will have little impact, at least in the short to medium-term, on ANC politics as Zuma remains the ANC's preferred candidate to take over from President Mbeki. Late realizations that there is a strong possibility he could be convicted have been met with designs to circumvent prosecution, rather than letting justice take its course and looking for an alternate presidential candidate. END SUMMARY.

-----  
ZUMA'S TRIAL DATE DELAYED  
-----

12. (C) Lawyers for ANC President Jacob Zuma and French arms dealer Thint on 15 April told South Africa's National Prosecuting Authority (NPA) and KwaZulu-Natal (KZN) Judge President Vuka Tshabalala that they will not be ready to start the trial on 4 August, as originally proposed by the NPA. Press reports note that Zuma's lawyers will ask acting National Director of Public Prosecutions Mokotedi Mpshe to review the NPA's case, highlighting the NPA's decision to prosecute Zuma and co-accused Shabir Shaik separately, arguing that it is unconstitutional. (NOTE: Shaik already argued this point in the Constitutional Court and lost. Moreover, this will be the second time Zuma's legal team will have asked Mpshe to review the NPA's case against him. Mpshe refused the first time they asked in September 2007. END NOTE)

13. (C) Should Zuma lose his battle to prove NPA procedures were unlawful, his lawyers will then bring a permanent stay of prosecution application, most likely arguing that "justice delayed is justice denied" though official arguments have not been made public. Because both arguments raise

constitutional issues, it is likely that the losers will appeal the decisions to the Constitutional Court, even further delaying any eventual trial, and making it a near certainty that Zuma will become President before the matter is resolved.

14. (U) Thint's lawyers also are arguing that they cannot defend themselves since two other pending court cases could affect charges against them. The Constitutional Court still must take a decision on the constitutionality of the search and seizure warrants, which allowed the state to seize allegedly incriminating documents from Zuma's attorney's office. The NPA also has not yet succeeded in securing evidence from the Mauritian Supreme Court.

-----  
Q-----  
KZN JUDGE SHOWING FIRST INKLING OF BIAS  
-----

15. (C) On 14 April, Judge Tshabalala denied knowing about the NPA's proposed date, adding that he should have been personally consulted in such a high-profile case, given the amount of time the trial will take. NPA Spokesperson Tlali Tlali rebuffed Tshabalala's comments, arguing that he had been copied on all correspondence to the defendants regarding its readiness to start on 4 August, that it has publicly and repeatedly stated its readiness to start on 4 August, and that documents to this effect have been entered into the court registrar. In fact, documents detailing the NPA's timetable for the trial -- which was to start 4 August and end 12 December -- have been leaked to the press and confirm that Tshabalala was informed.

16. (C) It is standard practice that court dates are set by  
PRETORIA 00001047 002.2 OF 002

prosecutors, that all parties must agree to the date, and that deputy judge presidents, in consultation with judge presidents, either assign a judge to the case or make a number of judges available. According to Johnson, his contacts have been eagerly awaiting to see who Judge Tshabalala assigned to hear Zuma's case. Johnson said the best-case-scenario would be for Tshabalala to call in a retired judge, who has no future to risk or personal, professional, or ethnic allegiances to Zuma.

-----  
POLITICAL, NOT LEGAL, SOLUTION EXPECTED  
-----

17. (C) Most of Johnson's judicial and NPA contacts believe that the ANC will find a political, not legal solution, to Zuma's legal troubles. Rumors of a pardon have been circulating ANC circles for weeks now, but Johnson told PolOff on 7 May that a pardon is unlikely since Zuma would have to be convicted first, something the ANC does not want. Johnson also added that the ANC's talk of a blanket amnesty for anyone involved in the arms scandal also would not help Zuma since he is charged with tax evasion and racketeering, in addition to corruption. Instead, Johnson believes the ANC has several options, some of which are political solutions disguised as legal options:

-- Change the Constitution to include Presidential immunity. The ANC would likely argue international precedence; however, it is unclear if the new law could be enacted retroactively since Zuma would have been charged long before he becomes President;

-- Replace acting NPA director Mpshe with someone who will review Zuma's file and declare there is no case;

-- The state can "lose" evidence;

-- The state can assign an inexperienced or incompetent

prosecutor to argue the case.

-----  
COMMENT  
-----

18. (C) In practical terms, the trial's delay will have little effect, at least in the short to medium-term, on ANC politics as Zuma remains the ANC's preferred candidate to take over from President Mbeki. Late realizations that there is a strong possibility he could be convicted have been met with designs to circumvent prosecution, rather than letting justice take its course and looking for an alternate candidate. Moreover, Judge Tshabalala's statements seem to look favorable to Zuma, or at least antagonistic towards the NPA, but do not bode well for justice in South Africa. While it may be true that Tshabalala was not personally consulted, it is highly unlikely that he was not informed of the NPA's request for a 4 August date. The case is and will continue to be the most high-profile in South Africa and has received exhaustive press coverage, which included NPA's proposed date, both in and outside South Africa.

BOST